DISTRIBUTED
APR 7 1986

Supreme Court, U.S.
FILED
APR 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1408

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

v.

ROBERT J. MCGINNIS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

PETITIONER'S REPLY BRIEF

MARVIN GITTLER
ASHER, PAVALON, GITTLER & GREENFIELD, LTD.
Two North LaSalle Street
Suite 1200
Chicago, Illinois 60602
(312) 263-1500

GEORGE KAUFMANN
(Counsel of Record)
DICKSTEIN, SHAPIRO & MORIN
2101 L Street, N.W.
Washington, D.C. 20037
(202) 296-1294

Attorneys for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
ARGUMENT	1
CONCLUSION	8

TABLE OF AUTHORITIES

CASES

Alvey v. *General Electric Co.*, 622 F.2d 1279 (7 Cir. 1980)	2
Calhoon v. *Harvey*, 379 U.S. 134 (1964)	5
Gomillion v. *Lightfoot*, 364 U.S. 339 (1960)	4
Guinn v. *United States*, 238 U.S. 347 (1915)	4
Lane v. *Wilson*, 307 U.S. 268 (1939)	3
Molina v. *Union De Trabajadores De Muelles*, 762 F.2d 166 (1 Cir. 1985)	5
Steelworkers v. *Sadlowski*, 457 U.S. 102 (1982)	5, 6, 7
Teamsters v. *United States*, 431 U.S. 324 (1977)	3
Texas Dept. of Community Affairs v. *Burdine*, 450 U.S. 248 (1981)	3

CONSTITUTION AND STATUTES

U.S. Const. Amend. I	7
Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*:	
Title VII	3
Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519, U.S.C. § 401 *et seq.*	
§ 101(a)(1)	3, 5, 6
§ 101(a)(2)	6, 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1408

LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

v.

ROBERT J. MCGINNIS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

PETITIONER'S REPLY BRIEF [1]

ARGUMENT

I

The District Court entered summary judgment for the defendants, and the Court of Appeals, in turn, directed the entry of summary judgment in favor of plaintiffs (respondents here). Thus, the respondents' estimate concerning the percentage of Local 710 members who live more than 150 miles from Chicago (Br. Opp. 1, remarkably increased for their argument to "some 300 miles", *id.* 5, 6) was not treated as fact by the Court of Appeals.

---

[1] "Pet." will refer to the Petition for a Writ of Certiorari herein; "App." will refer to the Appendix thereto; "Br. Opp." will refer to the Brief in Opposition filed by respondents.

Nor did the Court of Appeals adopt respondents' opinion that the Chicago members "are disproportionately supportive of petitioner's incumbent leadership" (*id.* 7), or their speculations concerning the vote on the proposed steward amendment which gave rise to this suit (*id.* 2, 3).[2] Most important, there is no basis in the Court of Appeals' decision for respondents' repeated assertions that the purpose of the union rule at issue here was to disenfranchise its non-Chicago members (*id.* 7-8, 12, 13).[3]

In short, the Court of Appeals decided this case on the basis of the fact, acknowledged by Local 710, that 18% of its members live at least 150 miles from Chicago (App. 4a-5a, 9a), and the Court's view on the law that § 101 (a) (1) of the LMRDA of 1959 forbids facially neutral union rules (*id.* 6a, 8a) which create unequal burdens on members with respect to meeting attendance and voting (*id.* 9a).

Contrary to what respondents say, the court below did not "pose[] the issue as 'whether the union rule as applied resulted in disparate treatment.'" (Br. Opp. 4, quoting App. 8a). In the quoted passage, the Court was describing not this case, but its earlier decision in *Alvey* v. *General Electric Co.*, 622 F.2d 1279 (7 Cir. 1980).[4] The Court went on to say: "Similarly, in this case the facially neutral in Chicago voting policy as applied re-

---

[2] Especially ingenious is respondents' invention of a "Joyce group", (Br. Opp. 3, referring to Local 710's Secretary-Treasurer). They thereby attempt to convey the impression that the case involves a conflict between two classes of members, one supporting incumbent officers and the other opposed to them.

[3] Respondents now so charge although they did not even allege improper motivation in the complaint, let alone establish it by proof.

[4] The sentence from which petitioners quote reads in full: "But *Alvey* demonstrated the need to go beyond such a superficial inquiry and considered whether the union rule as applied resulted in disparate treatment." (App. 8a, citing 622 F.2d at 1283, 1286.)

sults in a *disparate impact* on a group of members, substantially impinging on their voting rights because of the great geographical dispersion of Local 710 members." (App. 8a-9a, emphasis added.) Thus the Court of Appeals, unlike respondents, borrowed accurately from the terminology which has developed in litigation under Title VII of the Civil Rights Act of 1964.[5] But it erred in holding that "disparate treatment" and "disparate impact" are [s]imilar[]" in their legal result under § 101 (a) (1).[6]

The comparison between the LMRDA and the 1964 Civil Rights Act is instructive because the latter was novel in forbidding rules on the basis of their adverse *effects* even though they are neutral on their face. In attempting to avoid the conclusion that the Court's interpretation of § 101(a) (1) is, for this reason, anachronistic (Pet. 12-13), respondents cite no statute, and only a single constitutional law case, *Lane* v. *Wilson*, 307 U.S. 268 (1939). They say: "Contrary to petitioner's claim, this Court, and presumably Congress in enacting the LMRDA, was fully cognizant that rules which appear to treat all potential voters equally could be used to disenfranchise discrete groups within the electorate, such as Blacks." (Br. Opp. 10, n.2) While it is entirely proper to attribute knowledge of such voting rights cases to the members of the 1959 Congress who framed the "equal rights" provision of § 101(a) (1), respondents seriously misread the *Lane* case.

The state statute which was struck down in *Lane* did *not* "appear to treat all potential voters equally". As Justice Frankfurter wrote in *Lane*, the "crux of the present controversy is the validity of [the statute's] registration

---

[5] See, *e.g.*, *Teamsters* v. *United States*, 431 U.S. 324, 335-336, n.15 (1977), and *Texas Dept. of Community Affairs* v. *Burdine*, 450 U.S. 248, 252, n.5 (1981).

[6] See the discussion of *Alvey*, *supra* and like decisions from other courts at Pet. 9, n.3.

scheme, *with its dividing line* between white citizens who had voted under the "grandfather clause" immunity prior to *Guinn* v. *United States*, [238 U.S. 347 (1915)], and citizens who were outside it, and the not more than 12 days as the normal period of registration for the theretofore proscribed class [the black citizens]." (*Id.* at 271, emphasis added).[7]

II

Respondents advert only fleetingly to the importance of the questions presented by the Petition (Br. Opp. 8, n.1). They simply fail to do business with the fundamental point that the Court of Appeals' interpretation invites litigation over almost any union rule which regulates voting, nominations, and attendance or participation at union meetings. By their very operation, such rules create a "*de facto* class of [union] members" (Br. Opp. 6)—namely, those who fail to satisfy the requirements of the rule. Yet, on the Court of Appeals' view, union rules are subject to challenge if any such *de facto* class, or "fluid" group of members (*id.* 7), is more heavily "burdened" (App. 9a) by the rule than are other members.[8]

---

[7] *Guinn* v. *United States*, *supra*, struck down a "literacy test from which white voters were, in effect, relieved through the operation of a 'grandfather clause'" (307 U.S. at 269). The new statute *on its face* preserved the eligibility of those who had been permitted to vote under the invalidated statute (that is, Whites) but required that all others who were then qualified to vote register "between the thirtieth day of April, 1916, and the eleventh day of May, 1916" (*id.* at 270, n.1, quoting the statute). Those who failed to so register, were forever barred from voting.

Moreover, the statute was obviously motivated by a desire to prevent Blacks from voting. This is what was meant by "sophisticated * * * modes of discrimination" (*Id.* at 275). *Cf.* Justice Frankfurter's quotation of the passage in *Gomillion* v. *Lightfoot*, 364 U.S. 339, 342 (1960).

[8] Even on the narrower, less fundamental point of the decision's impact on the ability of unions to provide that important decisions shall be made at meetings of the entire membership (Pet. 11),

III

In our Petition we urge that the decision below is inconsistent with *Calhoon* v. *Harvey*, 379 U.S. 134 (1964) with respect to the first question presented (Pet. 6-8), and with *Steelworkers* v. *Sadlowski*, 457 U.S. 102 (1982) with respect to the second question presented (Pet. 15-18). Respondents' efforts to avoid the precedential force of these decisions are entirely without merit.

A. *Calhoon* cannot be dismissed as being "of limited value to pure Title I cases" (Br. Opp. 11). Part I of the *Calhoon* opinion (379 U.S. at 138-139) is wholly devoted to construing "equal rights" in § 101(a)(1). See especially *id.* at 139, quoted at Pet. 8 and 9.[9] Respondents' further contention, that *Calhoon* "did not consider whether the union rule was discriminatory in effect" (Br. Opp. 10), disregards our showing that with respect to the right to nominate (which is protected by § 101(a)(1)) the union's rule in *Calhoon did* have an unequal, adverse effect on the "complaining members" (*id.* 11) and the others whom the self-nomination rule disqualified from nominating *anyone*, because they were not themselves eligible to be candidates (Pet. 7-8).

---

plaintiffs' response is insubstantial. It is hardly surprising that the "record" does not show that the decision below jeopardizes the rules of other unions (Br. Opp. 8, n.1); the facts concerning the impact of a decision *on parties not before the Court* are rarely part of the evidentiary record because they are not material to the merits. Moreover, the fact that some locals affiliated with the Teamsters International provide for regional meetings or mail ballots (*id.*), does not negate the existence of many other geographically widespread local unions (within or outside the IBT) which have rules like that which is challenged here.

[9] A succinct and accurate description of *Calhoon's* holding was recently given in *Molina* v. *Union De Trabajadores De Muelles*, 762 F.2d 166 (1 Cir. 1985) (cited at Pet. 10, n.4):

> The Court there rejected their [the union members'] claim, noting that the issue of the provisions' validity would not fall

B. Respondents' assertion that because *Sadlowski* involved § 101(a)(2) it does not govern the interpretation of the proviso to § 101(a)(1) (Br. Opp. 17) is not accompanied by any explanation as to why these provisos should be construed differently. They obviously should be treated alike because both protect "reasonable rules", and both came into the Bill at the same time, as part of the Kuchel substitute. See Pet. 16, n.14. The Court below acknowledged that *Sadlowski* is the applicable precedent (App. 7a), but it adopted a balancing test of "reasonableness" rather than the rationality test which was declared in *Sadlowski*, 457 U.S. at 112 and 121.[10]

Respondents also plainly err when they assert that *Sadlowski* employed the "same kind of analysis in which the Court engaged below" (Br. Opp. 17). The sentence from which respondents quote in making this argument (Br. Opp. 18, quoting 457 U.S. at 113), does not appear in Part II B(2) of this Court's opinion wherein the proviso was construed, but in Part II B(1) which considered only

---

under Title I discrimination because *the same qualifications applied to everyone.*" [762 F.2d at 169 emphasis added].

Respondents' comment that in *Molina* "the court held any Title I claim precluded by Title IV" (Br. Opp. 14, n.3) is untenable. While the court suggested that Title IV might be preclusive, it did not rest its decision on that proposition: "We need not face this issue, however, because [plaintiff members] fail to meet what is in reality their first hurdle: stating a Title I claim." (762 F.2d at 168).

Because the very recent decision of the First Circuit in *Molina* is clearly in conflict with the decision below as to the meaning of § 101(a)(1) we will not further lengthen this brief by replying to respondents' efforts to distinguish the conflicting decisions from other circuits cited at Pet. 10 and n.4.

[10] Respondents would sweep all the chessmen from the board by attributing to the Court of Appeals the finding that the union's "justification for the rule was irrational". (Br. Opp. 18) The Court of Appeals nowhere said the rule was "irrational"; it said that the justifications for the rule were "simply not persuasive" under that Court's balancing test. (Ap. 12a)

the question whether the challenged union rule had an adverse impact on interests which Congress sought to protect by § 101(a)(2).

Finally, respondents' analogy to the First Amendment (*id.* 20) was expressly and unambiguously disapproved in *Sadlowski.*[11]

In sum, respondents cannot successfully dispute that as to both questions presented by the Petition the decision below is clearly inconsistent with a decision of this Court.

---

[11] After reciting the legislative history of the LMRDA Bill of Rights, the Court concluded:

> This history reveals that Congress modeled Title I after the Bill of Rights, and that the legislators intended § 101(a)(2) to restate a principal First Amendment value—the right to speak one's mind without fear of reprisal. However, *there is absolutely no indication that Congress intended the scope of § 101(a)(2) to be identical to the scope of the First Amendment. Rather, Congress' decision to include a proviso covering "reasonable" rules refutes that proposition.* First Amendment freedoms may not be infringed absent a compelling governmental interest. Even then, any government regulation must be carefully tailored, so that rights are not needlessly impaired. *Brown* v. *Hartlage*, 456 U.S. 45, 53-54 (1982). Union rules, by contrast, are valid under § 101(a)(2) so long as they are reasonable; they need not pass the stringent tests applied in the First Amendment context. [457 U.S. at 111, emphasis added.]

CONCLUSION

For the foregoing reasons and those stated in the Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

MARVIN GITTLER
ASHER, PAVALON, GITTLER & GREENFIELD, LTD.
Two North LaSalle Street
Suite 1200
Chicago, Illinois 60602
(312) 263-1500

GEORGE KAUFMANN
(Counsel of Record)
DICKSTEIN, SHAPIRO & MORIN
2101 L Street, N.W.
Washington, D.C. 20037
(202) 296-1294

Attorneys for Petitioner